

## TERMS AND CONDITIONS OF INDUSTRIAL HYDRAULIC SERVICES PTY LTD (A.C.N. 004 985 559)

In these conditions IHS means Industrial Hydraulic Services Pty Ltd (A.C.N. 004 985 559) of 391 Plummer Street, Port Melbourne, Victoria or any related corporation or legal entity. The customer means the person, firm, corporation, governmental or semi-governmental authority purchasing goods and/or services from, IHS. Unless otherwise clearly stated in writing by IHS the following conditions for IHS sales will apply.

**1. These** terms shall apply to the supply of goods and/or services by IHS to the customer where:

**1.1**The customer places an order for the goods and/or services which either contains no terms and conditions of supply or contains terms and conditions identical to those contained herein; and;

**1.2. IHS** accepts such an order.

**2. The** matters referred to in these Terms constitute a Contract between IHS and the customer. These Terms shall prevail over any other terms and conditions that may contain terms and conditions that may be inconsistent or contrary to those contained herein.

**3. These** Terms shall apply to the exclusion of all other agreements and prior representations, unless subsequently evidenced in writing by IHS and the customer, and shall be the whole of the Agreement between IHS and the customer.

**4. The** description of goods and/or services as stipulated on invoices or order forms is provided by way of identification only and the use of that description shall not constitute a description under any Contract of Sale by description. Any description of any goods in any brochure, document or other sales literature used by IHS shall not form part of any Agreement between IHS and the customer.

**5. IHS** shall have no obligations to make alterations in the design and construction of goods previously accepted and delivered even though design changes are incorporated in the goods subsequently being delivered.

**6. Unless** otherwise agreed by IHS and the customer in writing the price of the goods sold and services supplied shall be that specified by IHS on Invoice, Order Forms or Price List. Except as otherwise stated in writing by IHS, prices shall be exclusive of:

(a) Goods and Services Tax (GST);

(b) Delivery charges, and,

(c) Freight. Delivery charges become payable by the customer where the customer requires special transport or if goods have been quoted accordingly.

**7. Subject** to paragraph 8, the price shall be as quoted in writing by IHS. If a price is not quoted then it shall be in accordance with IHS's current price list. Verbal quotations are subject to written confirmation.

**8. IHS** reserves the right without notice to alter the price of goods and services whether or not a deposit or part payment has been received by IHS for such goods or service and to invoice the customer for any such extra amount where the costs of the goods to IHS has altered due to circumstances beyond its control including but without limiting the generality of the foregoing any variation in IHS's exchange rates, taxes, levies, imposts, duties, premiums, fees or charges and to correct errors and omissions.

**9. Payment** is to be made to IHS for goods and services within 30 days from which the goods and services are invoiced.

**10. If** the customer fails to comply with the terms of payment in paragraph 9 hereof then:

**11. The** customer agrees that it will pay IHS a late payment charge amount to 2% per month on all monies from time to time for goods and/or services including all charges from time to time owing by the customer.

**12. IHS** reserves the right to discontinue or suspend the supply of goods and/or service to the customer.

**13. IHS** reserves the right to withdraw at any time any credit facilities extended to the customer where payment is not received or where such other acts or omissions of the customer are objectionable to IHS.

**14. Where** a customer opens an account with IHS the customer may be required to nominate referees or guarantors (that shall be acceptable to IHS) before credit trading being approved by IHS.

**15. The** customer authorises IHS (its servants and agents) to make all reasonable inquiries to verify that the information given to IHS by the customer and that the customer can satisfy its commitments pursuant to these Terms with IHS.

**16. Invoices** may be issued by IHS and will be payable by the customer in respect of every delivery notwithstanding that the balance of the order has not been nor will not be delivered for any reason.

**17. Unless** IHS otherwise agrees in writing Stamp duty, delivery, carriage insurance, handling, storage and packaging and any other expenses relating to the goods shall be charged to and paid by the customer.

**18. In** the absence of specific instruction from the customer, IHS will select the carrier and make such agreement with the carrier on behalf of the customer as IHS in its absolute discretion deems appropriate.

**19. IHS** will endeavour to deliver the goods (or provide services) within the customers required delivery period, but subject to Clause 20 shall not in any event be liable for any loss or damage directly or indirectly sustained from any failure to deliver within such period. Time shall not be the essence of this Contract and any delay shall not be the basis of the customer's cancellation of this Contract.

**20. IHS** shall not be liable for any loss or damage including consequential loss or damage resulting from any failure to give notice of any delay in delivery or due to any late delivery for any reason whatsoever.

- 21. IHS** reserves the right to deliver the goods by instalments at its absolute discretion and in such circumstances the customer shall accept delivery of such goods by instalments.
- 22. Where** in order to deliver or collect goods, IHS or its carrier enters upon the customer's premises the customer shall provide full and safe access to IHS or its carrier and shall be liable for and indemnify IHS and its carrier against the cost of all loss, damage to property and injury to persons; occurring directly or indirectly as a result of the failure by the customer to ensure the said full and safe access.
- 23. The** customer shall be responsible for providing adequate labour and/or material handling equipment for the loading and unloading of goods at its premises.
- 24. Where** IHS agrees to collect goods from the customer's premises the customer shall ensure that the goods are all available for collection at an easily accessible central point and that they are ready for loading at the time IHS arrives to collect them.
- 25. The** customer's return of goods to IHS for credit requires the prior written approval of IHS.
- 26. Where** goods are being returned to IHS, the customer shall ensure that they are returned complete together with all operations manuals and accessories in a safe condition, having regard to the risk to:
- 26.1.** Persons handling them and in their vicinity; and;
  - 26.2.** Damage to the goods themselves.
- 27. The** customer shall inspect the goods supplied by IHS immediately upon delivery. All claims by the customer regarding quality, fitness for purpose, suitability and conformity or short supply shall be made within 7 days in writing to IHS. IHS shall not accept any liability if the customer fails to notify IHS within the said 7 day period in writing.
- 28. IHS** will not be liable or responsible for any loss or damage, cost or expense suffered by the customer resulting directly or indirectly from any failure by IHS to fulfil any of the Terms herein, including any obligation or liability in respect of any damage to or malfunction of any item supplied, if such failure, damage or malfunction is due to any delay or other cause beyond the control of IHS.
- 29. Where** goods are incorrectly ordered by the customer, supplied and subsequently returned, a restocking fee of 10 percent of the purchase price of the goods shall be paid together with any package and handling fee incurred by IHS as a result thereof, within 30 days of the date of invoice.
- 30. No** return of goods will be accepted and no credit note will be issued by IHS for any goods and/or services specifically acquired or manufactured for the customer.
- 31. If** IHS is of the opinion that goods when returned are otherwise than in the same condition as when they were delivered to the carrier or directly to the customer a charge equal to the cost necessary to restore the goods to their original condition shall be payable by the customer upon demand by IHS.
- 32. If** goods are returned to IHS which IHS is unable to resell to a third party or resell for the same amount as was sold to the customer then IHS may charge the customer an amount equal to the loss incurred as a result of the customer returning the goods.
- 33. Notwithstanding** any credit granted to or anything contained in these Terms to the customer, IHS shall retain the full legal and beneficial ownership and title in and to all the products delivered to the customer by IHS until the customer has paid to IHS the full amount due on all outstanding invoice(s) to IHS. Until then the customer will hold and sell the goods as agent for IHS and the customer shall store the goods separately and with the interest of IHS as owner clearly marked on the goods and the area in which they are stored. Any proceeds received by the customer from the resale of the goods shall be held by the customer in a separate account as trustee for IHS to the extent of the unpaid invoiced price of those goods and the proceeds of the sale shall be forwarded to IHS in full as soon as is reasonable practicable after receipt by the customer, and where the proceeds of sale are less than the amount owing by the customer to IHS, such proceeds shall be applied in practical satisfaction to the invoiced price or amount outstanding until all monies owing to IHS for all goods and services supplied by IHS to the customer have been paid for in full by the customer to IHS.
- 34. If** the customer defaults or otherwise fails to pay such amount to IHS then IHS may (but without limiting any other rights or remedies available to IHS at law in statute or equity) seize, repossess and/or sell the goods and for such purpose IHS or its representatives may enter any premises in or which IHS believe from time to time the goods to be located.
- 35. IHS** shall have the right to enter the customer's premises or upon any premises upon which the customer stores the goods or some of the goods are stored and to take the goods from the customer until the goods have been paid for. If IHS is unable to resell the goods at the same price or more as was invoiced to the customer by IHS, then IHS shall be entitled to make claim, demand or institute, if necessary, an action to recover any loss or damage sustained by IHS due to IHS not being able to obtain the invoiced price plus the added expenses incurred by IHS as a result of non-payment by the customer.
- 36. Should** the goods supplied by IHS to the customer be lost or damaged after delivery, the customer shall be liable to IHS for payment.
- 37. After** the goods leave IHS's premises they are at the risk of the customer. Any damage to the goods shall be at the customer's expense.
- 38. To** the full extent permitted by law, orders for goods specifically acquired or manufactured by IHS for the customer shall not be cancelled by the customer without IHS's written consent. Such cancellation shall be on terms, which indemnify IHS against all loss.
- 39. Changes** to the specifications at the customer's request either at the time of placing the order or thereafter will only be accepted at IHS's discretion. Such changes will only take effect when agreed in writing by IHS and which may result in a price increase.
- 40. IHS** supplies the customer with the labour and materials and goods and services described in this order on these Terms, provided always that nothing in these Terms shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law can not be excluded, restricted or modified.

**41. The** liability of IHS in respect of a breach of any term, condition or warranty prescribed by the Trade Practices Act 1974 or other legislation or law is limited, at the option of IHS, to:

**41.1** in relation to goods and materials supplied, the replacement of the goods or materials, the supply of equivalent goods or materials, the repair of the goods or materials, the payment of the cost of replacing the goods or materials or of acquiring equivalent goods or materials, or the payment of the cost of having the goods or materials repaired; and;

**41.2** in the case of labour and services provided, the supplying of the labour and services again, or the payment of the cost of having the labour and services supplied again;

**42. Subject** to the above, in no event shall IHS be liable for any other claims or damages including, but not limited to, claims of faulty workmanship and design, negligent or misleading advice, or any indirect, special or consequential damages or inquiry to any person, corporation or other entity arising out of the supply by IHS, or any of its servants, contractors or agents; and;

**43. Subject** to the above, IHS shall not be liable for default or failure in performance of its obligations pursuant to this order resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortages of suitable parts, components, materials, labour or transportation or any other cause beyond the reasonable control of IHS.

**44. If** goods are repaired under warranty they will be returned to the purchaser or ultimate user, carriage paid.

**45. IHS** does not promise the ready availability of parts for such goods as may be required to be repaired or replaced from time to time.

**46. Any** designs, tools, patterns, material, drawings, confidential information or equipment furnished by the customer or any other item which became the customer's property may be considered obsolete and can be destroyed by IHS after two consecutive years from order if not collected by the customer from IHS. IHS will not be responsible for any loss or damage arising there from.

**47. These** Terms and the contract are governed by and construed in accordance with the laws from time to time, if the State of Victoria which is where IHS is located. The parties submit to the non-exclusive jurisdiction of the Court of Victoria.

**48. To** the full extent permitted by law, the customer agrees

**48.1** to indemnify and at all times hereafter to keep indemnified and hold IHS, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the customers use, possession, ownership or resale to a third party or out of the use, possession or ownership by such third party of the goods or any part or parts thereof whether separately or in combination with any other equipment or material.

**48.2** that the indemnity in Clause 48.1 shall survive the termination of this Contract and shall extend to cover all alleged defaults or defects in the goods or part(s) or instructions supplied for use in connection with the goods or out of any failure of the goods to perform a particular task or to achieve a particular result or to comply with any particular specification.

**49. All** prior statements and representatives or collateral warranties that may have been given whether oral or in writing by IHS or its servants or agents prior to the delivery of the goods and/or services are expressly excluded to the full extent allowed by law and accordingly IHS is released by the customer from any liability as a result of such statement or representation.

**50. Failure** by IHS to insist upon strict performance by the customer of the Terms contained herein shall not be taken to be a waiver occasion and shall not discharge the customer from any of its obligations pursuant to these Terms.

**51. In** addition to any lien to which IHS may be entitled by statute or common law, IHS shall in the event of the customer's insolvency, bankruptcy or winding up, be thereupon entitled to a general lien on all property whatsoever owned by the customer and in IHS's possession at the time. Such lien will cover the unpaid price of any goods and/or services supplied by IHS to the customer.

**52. All** Notices on Accounts shall be in writing and may be hand delivered or mailed postage pre-paid addressed to the postal address of either IHS or the customer as notified to the other from time to time in writing. Any such Notice or Demand or Account shall be deemed to have been received two business days after dispatch if sent by mail on the next business day if delivered by hand or facsimile.

**53. To** the extent that any term or condition of this Contract is void, voidable or repugnant to the provisions of that Act or any other Act of the State of Victoria, or any other applicable legislation of the Commonwealth of Australia then this Contract shall be read as if that term or condition were deleted and the balance of this Contract shall be enforceable.

**54. This** Contract reflects the whole of the agreement between the parties and any prior representations are forthwith cancelled. The terms of this Contract may be varied by further agreement in writing between the parties.